

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 4th day of February, two thousand twenty.

Present:

Dennis Jacobs,
Denny Chin,
Joseph F. Bianco,
Circuit Judges.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: Feb 25 2020

Eddy Momplaisir,

Petitioner-Appellant,

v.

19-570

Michael Capra,

Respondent-Appellee.

Attorney Jeffrey Pittell, on behalf of Appellant, moves to be appointed as counsel for Appellant under the Criminal Justice Act or, in the alternative, to withdraw as counsel; and to stay all deadlines until this motion is resolved. This Court has determined sua sponte that it lacks jurisdiction over this appeal because a final order has not been issued by the district court as contemplated by 28 U.S.C. § 1291. *See Petrello v. White*, 533 F.3d 110, 113 (2d Cir. 2008). The Court's order in 2d Cir. 16-1532 vacated the dismissal of a claim, but the district court's order on remand purported only to deny an evidentiary hearing on that claim. *Compare* 2d Cir. 16-1532, doc. 197 (Order) at 4, *with* S.D.N.Y. 13-cv-6118, doc. 49 (Order) at 1–2, 8. The district court is instructed to expressly resolve Appellant's ineffective assistance of counsel claim that trial counsel failed to interview witnesses who would testify to the existence of a romantic relationship between Appellant and the complainant. Upon due consideration, it is hereby ORDERED that the appeal is DISMISSED. It is further ORDERED that Appellant's motion is DENIED as moot.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

Catherine O'Hagan Wolfe



Catherine O'Hagan Wolfe

MANDATE ISSUED ON 02/25/2020